

8/10/71

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Prosecutor Says He'll Seek A 3d Trial for Huey Newton

OAKLAND, Calif., Aug. 9 (AP)—The district attorney said today he "certainly" will try Black Panther co-founder Huey P. Newton a third time in the 1967 shooting death of a policeman. Newton's second trial ended in a hung jury.

A jury of 10 women and 2 men reported itself deadlocked 11 to 1 Sunday, and Superior Court Judge Harold Hove declared a mistrial. He ordered Newton to appear Tuesday before Presiding Judge William Hayes, who could schedule a new trial.

Alameda County District Attorney Lowell Jensen was asked if he would try Newton again in the Oct. 28, 1967, death of police officer John Frey. He replied: "Certainly, certainly. What do you think?"

"We would retry a case like this under any normal circumstances," Jensen said. "A case like this is not a normal case—it involves the slaying of a police officer, about the most serious offense we can think of."

He said a new trial date will be picked when Newton's case is routinely sent back to Hayes' court. Newton, 29, is charged with voluntary manslaughter in the fatal shooting of Frey during a street gun battle between Panthers and Oakland police.

At his first trial in 1968, Newton was charged with first-degree murder but was found guilty of the lesser charge of voluntary manslaughter.

He served 22 months of a 2 to 15-year sentence before the conviction was overturned by the California Court of Appeals, which said the jury was improperly instructed on unconsciousness as a defense.

Newton, who is free on \$50,000 bail, and his attorney, Charles Garry, told newsmen they believed the majority was for conviction and the single vote for acquittal was by a black woman, Ruthie Ellis of Oakland.

Another juror, who asked not to be identified, said, however, that the only juror dissenting from a majority for conviction was Juanita Henderson, who was not available for comment.

The prosecution contends Newton shot Frey when the officer stopped him to check out his car. Prosecutor Donald Whyte claimed that Newton reacted violently because a gun and marijuana were in the car and this could have resulted in revocation of Newton's then-current felony probation.

Newton denied on the stand in both trials that he had shot the 23-year-old rookie policeman. He said he was unarmed and that he became unconscious when he was shot in the abdomen.

The defense claimed that Frey was shot by another officer, Herbert Heanes, who came to Frey's aid and was himself wounded. Heanes denied shooting Frey.